

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

APOTEX, INC.,

*Plaintiff,*

v.

CEPHALON, INC., *et al.*,

Civil Action No. 2:06-cv-2768-MSG

*Defendants.*

**APOTEX'S STATUS CONFERENCE MEMORANDUM**

Pursuant to the Court's Order dated November 8, 2011, Apotex submits this memorandum in relation to the Status Conference scheduled for December 6, 2011.

**Apotex's Patent Claims**

Currently, only Apotex's claim of non-infringement of the '516 patent remains pending. Apotex has moved the Court to: (1) determine whether the patent case is exceptional and to award attorneys' fees; and (2) certify the judgment on all the patent claims under Fed. R. Civ. P. 54(b) at the same time the Court rules on the non-infringement of the '516 patent.

**Apotex's Antitrust Claims**

**Dispositive Motions**

Apotex expects to file at least one dispositive motion. Apotex believes its brief will be significantly shorter than the page limits proposed by the Plaintiffs (50 pages for initial and

responsive briefs and 25 pages for reply briefs, exclusive of the statements of facts), and does not oppose those limits for all parties. Apotex also agrees with the other Plaintiffs on the following proposed briefing schedule:

Initial Dispositive Motions:	January 12, 2012
Responses:	February 16, 2012
Replies:	March 8, 2012

Outstanding Discovery Issues

Apotex intends to serve a short supplemental expert report for Dr. Hal Singer. Apotex will work with the other parties to resolve any discovery requests relating to this supplement, and does not believe that Dr. Singer's supplemental report should impact the Court's schedule or require a delay in summary judgment briefing.

Apotex intends to join with the other Plaintiffs in taking the deposition of Mr. Richard Egosi, Teva's general counsel, who was involved in the Teva/Cephalon settlement negotiations. Mr. Egosi was timely noticed during fact discovery, but was not available for deposition because of illness. Teva has recently advised Apotex that Mr. Egosi will likely be available in late January 2012, and Plaintiffs expect to seek unopposed leave of Court to take this deposition at that time. Apotex does not believe that this deposition should impact the Court's schedule or require a delay in summary judgment briefing.

*Daubert Motions*

While not specifically mentioned in the Court's Order of November 8, 2011, *Daubert* motions were originally included in the summary judgment briefing schedule, so Apotex addresses them here. Collectively, there are 36 experts that have been identified in the antitrust matters, and

Apotex expects that a number of *Daubert* motions will be filed. Apotex believes that the number of experts on which the parties will actually rely should have been reduced based on the Court's patent rulings, and that even fewer experts may be required depending on the Court's rulings on dispositive motions. The number of *Daubert* motions should be reduced accordingly. Apotex therefore respectfully suggests the Court postpone *Daubert* motions until after the dispositive motion calendar, and work them into pretrial scheduling at a later point.

Other Issues

At the hearing scheduled for December 6, 2011, Apotex will be prepared to discuss other issues the Court may want to address, including, but not limited to, potential trial dates and settlement potential.

Respectfully submitted,

Dated: November 30, 2011

/s/ Thomas J. Maas \_\_\_\_\_  
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	)	No. 2:06-cv-2768-MSG
CEPHALON, INC., <i>et al.</i> ,	)	
	)	
<i>Defendants</i>	)	
	)	

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**CERTIFICATE OF SERVICE**

I certify that on November 30, 2011, a copy of APOTEX'S STATUS CONFERENCE MEMORANDUM was served via the Court's ECF system.

Dated: November 30, 2011

/s/ Thomas J. Maas \_\_\_\_\_  
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